IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4528 OF 2005

Sudhir Narayan Sawant ..Petitioner.
Vs.
The State of Maharashtra & Ors. ..Respondents.

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Mr. S.P. Kadam with Mr. R.V. Bansode for the Petitioner.
Mrs. M.P. Thakur, Assistant Government Pleader for Respondent Nos.1 and 2.
Mr. R.G. Ketkar for Respondent No.3.

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**CORAM: KSHITIJ R. VYAS, C.J. &**
**DR.D.Y.CHANDRACHUD, J.**

24th April, 2006.

ORAL JUDGMENT (Per DR.D.Y.CHANDRACHUD, J.) :

1. Rule, returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent taken up for hearing and final disposal.

2. The Petitioner is in the employment of the Fourth Respondent as a lecturer and has been allotted to work in an educational institution conducted by the Fourth Respondent at Nagthane in the Taluka and District of Satara. The service details

regarding the Petitioner are as follows :

i) Between 20th July, 1992 to 17th October, 1992; 11th July, 1993 to 4th June, 1994; 29th August, 1994 to 24th August, 1995; 2nd September, 1996 to 15th October, 1996 the Petitioner was appointed in leave vacancies;

ii) From 20th July, 1998 to 30th April, 1999 the Petitioner was appointed on clock hour basis;

iii) Between 12th October, 1999 till 19th June, 2000 the Petitioner was appointed during the period of study leave of an existing teacher by a local selection committee;

iv) Between 12th September, 2000 to 30th April, 2001, the appointment of the Petitioner was on a clock hour basis;

v) On 21st June, 2002 the Petitioner was given a full time appointment for the year 2002-2003 upon selection by the local

selection committee;

vi) On 20th September, 2002 the Petitioner was appointed again on clock hour basis and this was followed by full time appointments for the period between 23rd June, 2003 to 30th April, 2004 and between 15th June, 2004 to 30th April, 2005.

3. From the material which has been placed on the record, it is admitted that all appointments save and except for an appointment dated 12th July, 1994 were by the local selection committee. On 12th July, 1994 a University selection committee had recommended the appointment of the Petitioner though specifically in a leave vacancy. The substantive relief that has been sought in these proceedings is to the following effect:

"This Hon'ble Court by an appropriate writ, order, direction in the like nature it may be declared that :

(i) the Government Resolution No.NGC-1201/ 11815/ (38) / 01/ue-4, dated 18.10.2001 issued by the Respondent No.1 State of Maharashtra as illegal and the same may be quashed and set aside.

(ii) The letter bearing No. Outward No. Affiliated/ Gen/ 11700 dated 14.3.2005 issued by the Director of the Board of Colleges and University Development i.e. Respondent No.3 University as illegal and the same may be quashed and set aside."

4. In so far as the first of the aforesaid reliefs is concerned, the challenge to the Government Resolution dated 18th October, 2001 stands finally adjudicated upon by a judgment of a Division Bench of this Court in **V.L. Shirsath v. State of Maharashtra** (2002 (4) BCR 664), where save and except for clause 2(b) of the Government Resolution which is held to be unsustainable, the rest of the Government Resolution has been upheld. That being the position, these proceedings, in so far as the challenge to the Government Resolution dated 18th October, 2001 is concerned, will be governed by the judgment and order of the Division Bench noted above.

5. The second limb of the challenge is to a letter dated 14th March, 2005 written by the Director of the Board for College and University Development of the Shivaji University. The University has in its affidavit in reply explained that what the letter dated 14th

March, 2005 directs is conformity with the provisions of the statutes of the University. Statute 195(3) provides that all appointments to posts are required to be made on merit on the basis of a widely published advertisement as approved by the University. The statute prescribes the constitution of a selection committee for teachers to the following effect:

> "Selection Committee for Teachers:
>
> 1.Chairman, Governing Body of the College/ Recognised Institution or his nominee to be the Chairman of the Selection Committee;
>
> 2.A nominee of the Vice-Chancellor;
>
> 3.A Nominee of the Vice-Chancellor belonging to Backward Class Community;
>
> 4.One expert to be nominated by the University;
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> 5.One nominee of the Director of Higher Education in the case of the Faculty of Ayurvedic Medicine, the Director of Ayurveda M. S. or his nominee.
>
> 6.The Principal of the College/ Head of the Recognised Institution.
>
> 7.Head of the Department concerned of the College, if there is no such Head, Head of the Department concerned from any other affiliated College."

Statute 195(3) permits the making of temporary appointments by a

local selection committee. Statute 195(3) reads as under :

> "Temporary Appointments : When a vacancy of a teacher is to be filled in temporarily for a period not exceeding one term (i.e. six months) the Principal of Affiliated College/ Head of the Recognised Institution in consultation with the Chairman, Governing Body shall fill in the temporary vacancy and information of the same shall be given to the University authorities. If a vacancy of a teacher is for a period exceeding a term, the vacancy shall be filled in or the recommendation of a Local Selection Committee constituted as follows and information of the same will be given to the University authorities. (Such an appointment shall not be made for a period exceeding 12 months).
>
> 1. Chairman of the Governing Body.
>
> 2. The Principal of the College/ Head of the Recognised Institution concerned.
>
> 3. The Head of the Department of the College/ Recognised Institution in the subject concerned or a senior Faculty member nominated by the Chairman, Governing Body.
>
> 4. While appointing a teacher either on permanent basis or in a temporary vacancy no teacher shall be allowed to join in his duties unless he produces a clear discharge certificate from his previous Educational Institution, if any, where he was working.
>
> 5. All appointment orders shall be in the proforma as given in Appendix 'A' ".

6. The University has explained that the letter dated 14th March, 2005 was issued with a view to put an end to the unhealthy practice of managements appointing teachers of their choice year after year without issuing advertisements that were approved by the University. The University has submitted that the letter was issued to ensure that permanent appointments of teachers are made in the interest of the community of students at large. We find merit in the view point of the University that the process of appointing teachers through local selection committees is liable to breed nepotism by enabling managements to appoint teaching staff, often times not meeting the requirements prescribed by the University Grants Commission, at their whims and fancy.

7. The University Grants Commission had initially decided to supersede "The University Grants Commission (Qualifications Required of a Person to be appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulations 1982 which came into force on 1st July, 1983. Subsequently, the UGC framed regulations of 1991 which were notified on 19th September, 1991.

By the regulations of 1991, the possession of an M. Phil. Degree or the Doctoral degree, as the case may be, as a minimum qualification for appointment as lecturer was altogether dispensed with and the candidates were required to possess the newly imposed minimum educational qualification and in addition, to clear the National Eligibility Test (NET). Thus for the post of lecturer in arts and science faculties, amongst others, the regulations prescribed a good academic record with atleast 55% marks in the Master' sdegree in the relevant subject from an Indian or a foreign University. The eligibility test prescribed by the UGC was required to be cleared. These regulations were upheld by the Supreme Court in **University of Delhi v. Raj Singh** (1994 Sppl. (3) SCC 516). The Supreme Court while upholding the regulations held that in the case of eminently qualified men and women, the UGC would not hesitate to grant prior approval to the relaxation of the requirement of clearing the test.

8. The UGC by its circular dated 10th February, 1993 granted an exemption from the requirement of appearing for the

eligibility test to certain categories of candidates, amongst them, candidates who have already been awarded an M. Phil. Degree upto 31st March, 1991, those who had already been awarded a Ph. D degree and candidates who had submitted their Ph. D. thesis upto 31st December, 1993. The cut off date for candidates who had been awarded the M. Phil. Degree was extended to 31st December, 1992 subsequently. Again, on 21st June, 1995, the 1991 regulations were amended so as to provide that candidates who had submitted their Ph. D. thesis or passed the M. Phil examination by 31st December, 1993 were exempted from the eligibility test. The cut off date of 31st December, 1992 was upheld by the Supreme Court in **U. G. C. v. Sadhana Chaudhary** (JT 1996 (9) SC 234). The UGC again issued a fresh notification on 24th December, 1998 and it is material to note that even in the said notification it was provided that any relaxation in the prescribed qualifications can only be made by the University with the prior approval of the Commission.

9. In the year 2000, confronted with the experience that the

standard of Ph. D also varies from one University to another giving rise to an urgent need for a common test with a uniform syllabus, the UGC framed statutory regulations in exercise of the powers conferred under Section 26 read with Section 14 of the U. G. C. Act viz. The University Grants Commission ( Minimum qualifications required to the appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000. The regulations of 2000 were in supersession of the earlier regulation of 1991 and the notification of 1998. Under the Regulations the candidates were required to clear the NET. Subsequently, in 2002 the UGC came out with an amendment in certain respects. The experience of the UGC showed that it was receiving many cases from different universities in the country seeking exemptions from the NET qualification for appointing a person as a lecturer. In a number of cases, it was noticed by the UGC that the University has proceeded to appoint candidates without a NET qualification and then forwarded their cases seeking a post facto exemption from the requirement of passing the NET examination. Hence, in order to

ensure compliance with the regulations of 2000 which provided that any relaxation in the prescribed qualification can be made by the University only with the prior approval of the UGC, the Exemption Committee made certain recommendations regarding the general criteria for giving exemptions from the NET. At a meeting held on 13th August, 2004, the Commission approved the general criteria formulated by the Exemption Committee and decided to consider individual cases for giving exemption from NET based on the criteria evolved. The UGC has now clearly submitted that an exemption from the NET may be granted in view of clearly spelt out special circumstances which may be any of the following viz:

1. Where no NET examination is held in the subject or
2. The NET/ SET qualified or exempted candidates were not available when interviews were held following due procedures.

If an exemption is granted, a candidate is compulsorily required to clear the NET within a period of two years. Subsequently a circular was issued on 17th July, 2003, to deal with the situation where

universities and colleges first appointed candidates who are not qualified under the regulations and then send their proposals for exemption. To avoid this, all the State Governments, universities, and colleges were advised not to appoint candidates till clearance is received from the UGC. The UGC envisaged that proposals should be sent immediately after the selection of candidates by the selection committee in the prescribed proforma together with sound justification. On 9th December, 2004, the UGC informed Registrars of all universities and Education Secretaries in the States and Union Territories of the general criteria prescribed for giving exemption from passing the NET and it was clearly specified that a letter of appointment should be issued only after receiving a relaxation from the UGC in terms of the Regulations 2000. Accordingly, the UGC has placed an affidavit before this Court in the case of **Savant Ramesh Dattu v. The State of Maharashtra** (Writ Petition 10216 of 2004), that the Commission is considering cases of relaxation on merits within the parameters of relaxation as contemplated by the regulation of 1991 and 2000 as and when applications are forwarded by colleges/ institutions

through the University to the UGC. We have with the consent of all counsel read the affidavit in these proceedings where similar issues are raised.

10. In our view, the University in the present case cannot be faulted in issuing the impugned circular dated 14th March, 2005. On the one hand, as the affidavit filed by the UGC in **Savant Ramesh Dattu** (supra) shows, the Commission has serious concerns about the manner in which colleges and institutions were appointing lecturers, who did not meet the required qualifications and were then moving the UGC for post facto exemptions from the requirement of passing the NET examination. The University on its part has in the present case made out valid grounds for its concern that private managements are resorting to the unhealthy practice of making appointments through local selection committees so as to obviate the need for a wide publication of advertisements that would generate the best possible response. The Statutes of the University make detailed provision for the appointment of teachers through University Selection Committees. Local selection

committees are contemplated where temporary appointments are made. Despite this, year after year, the experience of the University has shown that managements continue to appoint teachers without issuing advertisements approved by the University to the detriment of the interest of the community of students and the cause of education. The decision of the University, which is an expert academic body is entitled to deference. The Court will not interfere in an academic matter, particularly in the absence of arbitrariness or malafides.

11. In these circumstances, we find that the first part of the challenge to the Government Resolution dated 18th October, 2001 has been covered by the judgment of a Division Bench of this Court. The second part of the challenge to the University' scircular dated 14th March, 2005 is totally lacking in any basis or foundation. The Petition is accordingly dismissed.

CHIEF JUSTICE

(DR. D.Y. CHANDRACHUD, J.)